



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2019-0036; FRL-9992-64-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
Maryland; Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality
Standards**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submittal from the State of Maryland for the 2015 ozone national ambient air quality standard (NAAQS or standard). Whenever EPA promulgates a new or revised NAAQS, states are required to make a SIP submission showing how the existing approved SIP has all the provisions necessary to meet the requirements of the new or revised NAAQS, or to add any needed provisions necessary to meet the revised NAAQS. The SIP revision is required to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. Maryland has made a submittal addressing the infrastructure requirements for the 2015 ozone NAAQS. EPA is proposing to approve Maryland's SIP revision addressing the infrastructure requirements for the 2015 ozone NAAQS in accordance with the requirements of section 110(a) of the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2019-0036 at <http://www.regulations.gov>, or via email to spielberger.susan@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments

cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, Planning and Implementation Branch (3AD30), Air and Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-5787. Ms. Schmitt can also be reached via electronic mail at schmitt.ellen@epa.gov.

SUPPLEMENTARY INFORMATION: On October 11, 2018, the Maryland Department of the Environment (MDE) submitted a revision to its SIP to satisfy the requirements of section 110(a) of the CAA for the 2015 ozone NAAQS.

I. Background

On October 26, 2015, EPA issued a final rule revising both the primary and secondary NAAQS for ozone based on 8-hour average concentrations to 0.070 parts per million (ppm). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(1) of the CAA provides the procedural and

timing requirements for SIPs, while section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The content of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2015 ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with the 1997 and 2008 ozone NAAQS.

II. Summary of SIP Revision and EPA Analysis

On October 11, 2018, EPA received a SIP revision submittal from MDE to satisfy the requirements of section 110(a) of the CAA for the 2015 ozone NAAQS (Maryland's submittal). Maryland's submittal addressed the following infrastructure elements, or portions thereof, for the 2015 ozone NAAQS:

CAA section 110(a)(2)(A), (B), (C), D(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is proposing to make a determination that the submittal meets the requirements of section 110(a)(2)(A), (B), (C), D(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof, of the CAA.

Following EPA guidance, which was issued on September 13, 2013 (2013 guidance),¹ Maryland's October 11, 2018 SIP submittal did not address the portion of section 110(a)(2)(C) pertaining to permit programs, known as nonattainment new source review (NNSR), under part D, title I of the CAA, and

¹ "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)." Memorandum from Stephen D. Page, September 13, 2013.

section 110(a)(2)(I), referred to as element (I), also pertaining to the nonattainment requirements of part D, title I of the CAA. Both element (I) and the NNSR portion of element (C) pertain to SIP revisions that are collectively referred to as a nonattainment SIP or an attainment plan and, if required due to an area being designated nonattainment, would be due by the dates statutorily prescribed under subparts 2 through 5 under part D of the CAA. Because the CAA directs states to submit these plan elements on a separate schedule, EPA does not believe it is necessary for states to include these elements in the infrastructure SIP submission due three years after adoption or revision of a NAAQS.

Maryland's submittal also did not include a portion to address section 110(a)(2)(D)(i)(I) (significant contribution to nonattainment or interference of maintenance through interstate transport of air emissions). Therefore, EPA will take later, separate action on section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS, once this portion has been submitted.

A detailed summary of EPA's review and rationale for approving Maryland's submittal may be found in the technical support document (TSD) for this proposed rulemaking action which is available online at www.regulations.gov, docket number EPA-R03-OAR-2019-0036.

III. EPA's Approach to Review Infrastructure SIPs

Pursuant to EPA's interpretation of section 110(a) of the CAA, states must provide SIP revisions addressing relevant infrastructure SIP elements from section 110(a)(2)(A) through (M) or provide certification that the existing SIP contains provisions adequately addressing these elements for the 2015 ozone NAAQS.

Due to ambiguity in some of the language of section 110(a)(2) of the CAA, EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these

provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.² In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.³ EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

IV. Proposed Action

EPA is proposing to approve Maryland's October 11, 2018 SIP revision which provides the basic program elements, or portions thereof, specified in section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) necessary to implement, maintain, and enforce the 2015 ozone NAAQS. This proposed rulemaking is not taking action on section 110(a)(2)(I) nor on the NNSR permitting program requirements of section 110(a)(2)(C), which pertain to the nonattainment planning requirements of part D, title I of the CAA. Such SIP revisions are required when an area is designated nonattainment and, if required, would be due to EPA by the dates statutorily prescribed in CAA part D, subparts 2 through 5. Because the CAA directs states to submit these plan elements on a separate schedule, EPA does not believe it is necessary for states to include these elements in the infrastructure SIP submission due three years after adoption or revision of a NAAQS. Additionally, EPA is not taking action on CAA section 110(a)(2)(D)(i)(I) (significant contribution to nonattainment or interference of maintenance through interstate transport of air emissions) for the 2015 ozone NAAQS because Maryland's submission did not include this element. EPA will take later, separate action on

² EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf), as well as in numerous agency actions, including EPA's prior action on Maryland's infrastructure SIP to address the 2008 ozone NAAQS (79 FR 25054 (May 2, 2014)).

³ See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. EPA*, No. 16-71933 (Aug. 30, 2018).

this element once it has been submitted.

EPA is seeking public comment on whether Maryland's SIP revision meets the infrastructure requirements in 110(a)(2). These comments will be considered before taking final rulemaking action. Please refer to the TSD for this rulemaking which is available online at www.regulations.gov, docket number EPA-R03-OAR-2019-0036, for further discussion of each element being associated with this approval.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a).

Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to Maryland's section 110(a) infrastructure requirements for the 2015 ozone NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: April 12, 2019

Cosmo Servidio
Regional Administrator,
Region III.

[FR Doc. 2019-08165 Filed: 4/23/2019 8:45 am; Publication Date: 4/24/2019]